



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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EMS TRANSMISSION 04/03/01
Instruction Memorandum No. CA-2001-035
Expires: 09/30/02

To: All Field Offices (Attn: Realty Specialists)

From: State Director

Subject: New Direction - Land Exchange Processing

This memorandum provides guidance to close all existing assembled land exchange agreements and to conform all new land exchanges to the new guidance anticipated with the release of the revised exchange handbook.

Guidance on initiating future land exchanges:

With the exception of several pending land exchange transactions described in this memorandum, all field offices must take the following actions with respect to any future land exchanges:

- Review old public notices. Some field offices are still operating under old notices of realty actions (NORAs) published long ago informing the public of a proposed land exchange. Those NORA publications are no longer valid. If the public lands in those NORAs will be used in a future exchange, we must comply with the FLEFA regulations and renotify the public of the proposed exchange by publishing and distributing a Notice of Exchange Proposal (NOEP).

Additionally, NOEPs that are nearing expiration of the five year segregation period and/or did not identify the lands involved on both sides of the exchange should be closely reviewed in light of recent interest in the exchange program and concurrence reviews required by exchange policy.

- Reinitiate the entire land exchange process. In accordance with exchange policy and regulations, upon closure of existing agreements a new feasibility report, draft agreement to initiate (ATI) and public notification must be completed to continue land exchanges with exchange proponents. The terms of any assembled land exchange arrangement are to be addressed in the ATI, per 43 CFR 2201.1(c)(10). Partial feasibility reports (those without

both public land and specific private lands) no longer have the approval of the State Director. Obviously the work done to generate those reports will not be wasted since any new exchange proposal must be based on a viable feasibility report (federal lands and non-federal lands). Specifically, the requirement to list the federal and non-federal lands causes some concern since many non federal lands identified in planning documents normally do not become available for exchange at opportune times. Our suggestion is that you continue processing the public lands to prepare for an exchange, draft a feasibility report so that when a nonfederal parcel becomes available we can complete the feasibility report, modify the ATI, and get the review completed in as short a time as possible, and a schedule for completing the exchange should be provided.

- Review existing NEPA documentation. Generally, previously prepared environmental documentation, clearances, i.e. ESA, cultural, etc. are still in compliance with established policy and may be used in a future exchange action. However, where NEPA documents have been completed for the **disposal** of the public land, the documents must be either supplemented, redone, or augmented to comply with the **PUBLIC INTEREST** determination required by the exchange regulations. A comparison between the federal and non-federal land resource values must be completed in order to make a determination that an exchange is in the public interest. It is not proper to address the disposal of a parcel of public land in an environmental assessment for an exchange without identifying the non-federal land to be acquired. The non-federal land must be identified either specifically or by legal description of the lands in a discrete project area. We must insure that we tie the exchange of public lands for private lands, and there must be a direct link between the two. If the exchange proposal has changed significantly since initiating the original proposal, a brief EA/DR should be written tiering back to the previously prepared environmental document(s). In most instances this would involve providing updated information in the EA and decision record to reflect the changes that have occurred. Your DR or FONSI must address the current exchange proposal. The NEPA document must not leave questions as to what lands are being exchanged. State Office IM No. CA 2000-089 dated August 24, 2000, addresses this necessity.

Prepare issue paper. As discussed in WO IM No. 2000-107 dated April 11, 2000, at a minimum, WO concurrence must be obtained at two stages during the exchange process: (1) on approval of the feasibility report and completion of draft NOEP; and (2) prior to approval of the land exchange decision.

The issue paper must conform to the new secretarial briefing document format which was emailed to realty specialists on March 9, 2001.

Balance assemble land exchange agreements. As required by 43 CFR 2201.1-1(e)(2), the values of the federal and non-federal land conveyed are to be balanced at least every three years.

Status of existing assembled agreements with exchange proponents and final transactions:

1. CAL-BLMX, Inc. The existing Statewide agreement reflects a balance owing to the United States. The agreement will be balanced and closed upon completion of final pending transactions and

equalization payments, as follows:

Folsom. The final transaction will consist of acquiring two parcels of private land currently held in escrow to aid in reducing the debt owed the United States. Thereafter, the land exchange process will be reinitiated as described above to continue any new CAL-BLMX exchanges.

Ukiah. The final transaction (Payne Ranch exchange) was recently completed. A proposed land exchange involving the Rocky Mountain Elk Foundation (RMEF) must be processed under the new direction described above.

Hollister. The final transaction will consist of conveying federal land to CAL-BLMX, Inc. to repay the United States' debt owned for private lands previously transferred into federal ownership in your field office's jurisdiction.

El Centro. We have requested IBLA remand the pending exchange (Felicity) which has been appealed. The State director will vacate the decision that approved the land exchange. We recommend you reinitiate the land exchange process to process the Felicity exchange and any new CAL-BLMX exchanges.

2. The Nature Conservancy. The existing Statewide agreement reflects a balance owed by the United States. TNC has been asked to close the ledger and "donate" the value difference to the United States.

3. Conservation Partners, Inc. The existing Statewide agreement has been balanced and closed. There are no valid exchange proposals at this time. Any new exchange proposals will be processed under the new direction as described above.

4. Trust for Public Land. The existing Statewide agreement reflects a balance owing to the United States. Because there are no pending exchange proposals, the agreement will be closed and the value difference deposited in the suspense account in the form of an equalization payment.

5. Sierra Pacific Industries. The existing exchange agreement reflects a balance owing to the United States which will be paid within 30 days to balance and close the existing agreement. On payment of the balance, the ledger will be balanced and the agreement closed. A pending transaction that exists will not be processed under the existing agreement. A new ATI will be initiated immediately to accommodate the pending transaction. This agreement shall contain the 13 requirements mandated by regulations. Thereafter, any new exchange proposal will be initiated and processed under the new direction as described above.

Redding. The pending transaction will consist of two phases, Phase 3 and Phase 4, and will consist of Federal and non-Federal land within the Redding and Susanville Field Office areas. To get the exchange done, the phases will be processed as follows:

Phase 3 - new ATI (13 mandatory items - 43 CFR 2201.1(c))
update appraisal
redo EA to discuss new Phase 3 exchange

check that the public notification (NOEP) was adequate and inclusive of
encumbrances
draft NOD
prepare issue paper (WO concurrence)
publish NOD

Phase 4 - amend ATI
appraisals start
do feasibility report
draft NOEP
prepare issue paper (WO concurrence)

6. American Land Conservancy. The existing Statewide agreement has been balanced and closed. There are no valid exchange proposals at this time. Any new exchange proposals must be initiated and processed under the new direction as described above.

Redding. As agreed between BLM and ALC, with the completion of the Vacek exchange all existing exchanges with ALC are completed, the ledger balanced, and the agreement closed. We are aware of several private lands that have been discussed (Avilla Estates lots) but as of this date none of the remaining lots have been optioned by ALC. They have also discussed the exchange of several parcels of public lands but due to circumstances these lands have never moved beyond the discussion stages, even though several of the adjacent land owners/operators have indicated a strong interest in acquiring the lands via exchange. Any transaction being considered with ALC serving as BLM's exchange proponent will require a new ATI, feasibility report and a new NOEP as discussed above.

Susanville. With the completion of the Bizz Johnson Trail exchanges with ALC the present agreement will be closed. Any excess funds will be deposited into the suspense account to be utilized under the Baca bill.

All other field offices not specifically listed in this memorandum should review their existing ongoing exchanges in strict compliance with the exchange regulations and recent IMs from the WO and CASO, if you have any, and advise CA-931 of the status along with a copy of the corresponding ATI and feasibility report(s).

Any questions should be directed to Dave McIlnay, Chief, Branch of Lands at 916-978-4630, or Dianna Storey, land law examiner, at 916-978-4676.

Signed by:
James Abbott
Acting State Director

Authenticated by:
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